

1 DAVID M. OVERSTREET, IV, No. 103039
2 RACHELLE TAYLOR GOLDEN, No. 295385
3 **OVERSTREET & ASSOCIATES**

4 Attorneys At Law

5 1300 E. Shaw Avenue, Suite 125
Fresno, CA 93710

6 Telephone (559) 221-2771
Facsimile (559) 221-2775

7 ATTORNEYS FOR Plaintiffs: MEGAN MCKEON, TINA NEAL, LAILA NEAL

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 MEGAN MCKEON; LAILA NEAL, A
11 MINOR BY AND THROUGH HER
12 GUARDIAN AD LITEM, TINA NEAL;
and TINA NEAL,

13 Plaintiffs,

14 vs.

15 CENTRAL VALLEY COMMUNITY
16 SPORTS FOUNDATION, a Non-Profit
Corporation, dba GATEWAY ICE
CENTER; and JEFF BLAIR, an individual;
and DOES 1 through 50, Inclusive,

17 Defendants.

18 NO.

19 **COMPLAINT - DEMAND FOR JURY
TRIAL**
[FRCP § 38(B); Local Rule 201]

20 **I. SUMMARY**

21 1. This is a civil rights action by Plaintiffs, MEGAN MCKEON; LAILA NEAL,
a minor by and through her Guardian ad Litem, Tina Neal; and TINA NEAL (collectively hereinafter
referred to as "Plaintiffs"), through their attorneys of record, and submit this Complaint against
Defendants, CENTRAL VALLEY COMMUNITY SPORTS FOUNDATION dba GATEWAY ICE
CENTER, and DOES 1 THROUGH 50, Inclusive (collectively hereinafter referred to as
"Defendants").

22 **II. JURISDICTION AND VENUE**

23 2. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C.
§ 1331 and 1333 for federal question jurisdiction, and ADA claims.

1 3. This Court has supplemental jurisdiction for Plaintiffs' claims brought under
2 California law, as they are so related that the form the same case and controversy, and arose from
3 the same nuclei of operative fact, pursuant to 28 U.S.C. § 1337.

4 4. Declaratory and other relief are sought pursuant to 28 U.S.C. § 2201 and
5 2202.

6 5. All actions complained of herein took place within the jurisdiction of the
7 United States District Court, Eastern District of California, and venue is invoked pursuant to 28
8 U.S.C. § 1391(b), (c).

III. THE PARTIES

10 6. Plaintiff, MEGAN MCKEON, an individual, is and at all relevant times a
11 person who uses either a wheelchair or arm braces for mobility, due to a severe burn injury she
12 sustained as a young child and is also an amputee. Plaintiff is “physically disabled,” as defined by
13 all applicable United States and California laws, and a member of the public whose rights are
14 protected by these laws.

15 7. Plaintiff, LAILA NEAL, a minor by and through her Guardian Ad Litem, Tina Neal,
16 has Cerebral Palsy, and who solely uses a wheelchair for mobility, but relies upon her Mother and
17 Plaintiff, TINA NEAL, to assist her for mobility. Plaintiff is “physically disabled,” as defined by all
18 applicable United States and California laws, and a member of the public whose rights are protected
19 by these laws.

20 8. Plaintiff, TINA NEAL, is the Mother of Plaintiff, LAILA NEAL, who was
21 present during the incident, and was discriminated against based upon her association to her
22 daughter, LAILA NEAL.

23 9. Defendant, CENTRAL VALLEY COMMUNITY SPORTS FOUNDATION
24 dba GATEWAY ICE CENTER (“GATEWAY”), is a California Non-Profit Corporation, which
25 owns, operates and/or leases the Facility located at 2473 N. Marks Avenue, Fresno, California
26 93722. GATEWAY is open to the public, intended for non-residential use, and its operation affects
27 commerce. GATEWAY is therefore a public accommodation as defined by applicable state and
28 federal laws.

1 10. Plaintiffs are ignorant of the true names and capacities of Defendants sued
2 herein as DOES 1 THROUGH 50, Inclusive, and therefore sue these Defendants by such fictitious
3 names. Plaintiffs will amend this Complaint to allege their true names and capacities when
4 ascertained. Plaintiffs are informed and believe, and thereon allege, that each of these fictitiously
5 named Defendants are legally responsible in some manner for the occurrences herein alleged, and
6 that the injuries herein alleged were proximately caused by said fault.

7 11. At all times herein mentioned, each of the Defendants was the agent, partner,
8 joint venture, and/or employee of each of the remaining Defendants, and each was acting within the
9 course and scope of such agency, partnership, joint venture, and/or employment. Furthermore, in
10 committing the acts and omissions alleged here, the Defendants were all acting with the knowledge,
11 consent, approval, and/or ratification of their Co-Defendants.

IV. FACTS

13 12. On June 26, 2016, Plaintiff, MEGAN MCKEON (hereinafter referred to as
14 "MCKEON") went to a birthday party at Defendant, GATEWAY, to celebrate the 16th birthday of
15 a friend of hers during the general skating session. For ease of mobility, MCKEON used her
16 wheelchair, and was enjoying time in her wheelchair on the ice with her friends. An employee of
17 GATEWAY observed MCKEON in her wheelchair on the ice, and instructed MCKEON to get off
18 the ice. MCKEON was then informed by GATEWAY's employee, that wheelchairs were not
19 allowed on the ice during the general skating session, and that if she wanted to use her wheelchair
20 on the ice, that she had to make arrangements for a special skating session for persons with
21 disabilities. MCKEON was then forced to leave the ice, and observe her non-disabled friends, enjoy
22 ice skating. MCKEON's friends understandably felt bad and took turns sitting with her in the lobby,
23 while the other party attendees ice skated.

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1 13. On June 26, 2016, Plaintiff, MEGAN MCKEON (hereinafter referred to as
2 "MCKEON") went to a birthday party at Defendant, GATEWAY, to celebrate the 16th birthday of
3 a friend of hers during the general skating session. For ease of mobility, MCKEON used her
4 wheelchair, and was enjoying time in her wheelchair on the ice with her friends. An employee of
5 GATEWAY observed MCKEON in her wheelchair on the ice, and instructed MCKEON to get off
6 the ice. MCKEON was then informed by GATEWAY's employee, that wheelchairs were not
7 allowed on the ice during the general skating session, and that if she wanted to use her wheelchair
8 on the ice, that she had to make arrangements for a special skating session for persons with
9 disabilities. MCKEON was then forced to leave the ice, and observe her non-disabled friends, enjoy
10 ice skating. MCKEON's friends understandably felt bad and took turns sitting with her in the lobby,
11 while the other party attendees ice skated.

12 14. GATEWAY's intentional discriminatory policy against persons with
13 disabilities, segregated PLAINTIFFS from their non-disabled friends, by not allowing them to ice
14 skate along with other non-disabled friends. PLAINTIFFS were, and continue to be, deterred from
15 visiting GATEWAY because PLAINTIFFS know that its good, services, facilities, privileges,
16 advantages, and accommodations were and are unavailable to PLAINTIFFS, MCKEON and LAILA
17 NEAL, and associated discrimination of TINA NEAL, due to MCKEON and LAILA NEAL's
18 physical disabilities, as evidenced by their written policy of discrimination. Attached hereto as
19 "Exhibit A" is a copy of GATEWAY's written discriminatory policy. PLAINTIFFS would like to
20 return to GATEWAY once their discriminatory policy is changed.

21 15. GATEWAY knew, or should have known, that this discriminatory policy was
22 in violation of Federal and State law, and that it interfered with and denied PLAINTIFFS access to
23 GATEWAY's ice skating activities. To date, GATEWAY refuses to change their discriminatory
24 policy.

25 16. PLAINTIFFS experienced embarrassment and humiliation as a result of
26 GATEWAY's discriminatory policy and conduct by GATEWAY's agents on the date of the
27 respective birthday parties.

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V. FIRST CAUSE OF ACTION
VIOLATION OF AMERICANS WITH DISABILITIES ACT
48 U.S.C. § 12101, *et seq.*, and 28 C.F.R. § 36.201, *et seq.*

**(For Declaratory and Injunctive Relief Against GATEWAY, by PLAINTIFFS, MCKEON
and LAILA NEAL)**

4 17. The allegations above are re-alleged and incorporated by reference, as though
5 fully set forth herein.

6 18. Pursuant to 42 U.S.C § 12182(a), “no individual shall be discriminated
7 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
8 privileges, advantages, or accommodations of any place of public accommodation.”

9 19. GATEWAY is specifically listed as a place of public accommodation,
10 pursuant to 48 U.S.C. § 12181 (7)(L), as it is a “place of exercise or recreation.”

11 20. Pursuant to 28 C.F.R. § 36.302, GATEWAY is required to make reasonable
12 modifications to their policies, practices, and procedures when necessary to afford goods, services,
13 facilities, privileges, advantages or accommodations to individuals with disabilities, unless they can
14 demonstrate that making the modification would fundamentally alter the nature of the goods,
15 services, facilities, privileges, advantages, or accommodations.

16 21. Pursuant to 48 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205, GATEWAY
17 is prohibited from “exclud[ing] or otherwise deny[ing] equal goods, services, facilities, privileges,
18 advantages, accommodations, or other opportunities to an individual...because of the known
19 disability of an individual with whom the individual...is known to have a relationship or association.”

20 22. On June 26, 2016, Plaintiff, MEGAN MCKEON was discriminated against,
21 and wholly excluded from participating in the birthday party activity of ice skating, solely on the
22 basis of her use of a wheelchair, when she was told by GATEWAY's agents that she was not allowed
23 to be on the ice in her wheelchair and forced to exit the ice skating rink. MCKEON was then forced
24 to watch her friends enjoy the ice skating activity from the bleachers and ultimately the lobby, when
25 it became too cold to sit inside the rink.

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1 23. On January 6, 2017, LAILA NEAL were discriminated against , and was
2 wholly excluded from participating in the birthday party activity of ice skating, solely on the basis
3 of her use of a wheelchair, when TINA was told by GATEWAY's agents that LAILA would not be
4 allowed to be on the ice in her wheelchair and forced to exit the ice skating rink. LAILA was then
5 forced to leave the birthday party early because she was not allowed to participate in the ice skating
6 acitivities.

7 24. GATEWAY failed to make reasonable modifications to their practices and
8 procedures in order to allow PLAINTIFFS the ability to enjoy the recreational activity of ice skating
9 resulting in emotional injury.

10 25. PLAINTIFFS seek an injunctive order requiring GATEWAY to modify its
11 policies, practices and procedures, including but not limited to the training of its staff, to allow them
12 to equally access GATEWAY without fear of discrimination, and resulting injury.

VI. SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA CIVIL RIGHTS UNRUH ACT
Civil Code § 51 *et seq.*
Remedial and Injunctive Relief and Statutory Damages, Against GAT
PLAINTIFFS)

16 25. The allegations above are re-alleged and incorporated by reference, as though
17 fully set forth herein.

18 26. California Civil Code § 51(b) states, in part that, “All persons...are free and
19 equal, and no matter what their ... disability... [and] are entitled to the full and equal
20 accommodations, advantages, facilities, privileges, or services in all business establishments of every
21 kind whatsoever.” Subdivision (e)(6) prohibits discrimination by association.

22 27. California Civil Code § 51(f) provides, “A violation of the right of any
23 individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall
24 also constitute a violation of this section.”

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1 28. California Civil Code § 51(e)(6) states, “...disability... includes a perception
2 that the person has any particular characteristic or characteristics within the listed categories **or that**
3 **the person is associated with a person who has**, or is perceived to have, any particular
4 characteristic or characteristics within the listed categories.” (Emphasis added; See also, *Winchell*
5 *v. English* (1976) 62 Cal.App.3d 125, 129.) Civil Code § 52(a) provides, “Whoever denies, aids or
6 incites a denial, or makes any discrimination or distinction contrary to Section 51, ... is liable for
7 **each and every offense** for the actual damages...up to a maximum of three times the amount of
8 actual damage... .” (Emphasis added.)

9 29. Not only did GATEWAY violate the Americans with Disabilities Act for
10 their intentional and egregious conduct toward Plaintiffs MCKEON and LAILA NEAL, they also
11 violated the Unruh Act for that very same conduct. The Unruh is much broader than the Americans
12 with Disabilities Act and Plaintiff TINA NEAL, who is LAILA NEAL's Mother, and who was
13 directly associated with LAILA NEAL, as LAILA NEAL is wholly dependant upon TINA NEAL
14 for mobility, was also discriminated against solely due to LAILA NEAL's disability.
15 GATEWAY actions and omissions on October 2, 2016, denied PLAINTIFFS
16 the full and equal accommodations, advantages, facilities, privileges and services at GATEWAY.

17 30. These actions and omissions were based upon GATEWAY'S unlawful
18 written and oral ice skating policy. GATEWAY denied, aided or incited a denial, and/or
19 discriminated against PLAINTIFFS, thus violating the Unruh Act.

31. PLAINTIFFS were damaged by GATEWAY'S wrongful conduct.

VIII. PRAYER FOR RELIEF

22 WHEREFORE, PLAINTIFFS pray judgment against GATEWAY, and each of them,
23 for:

- 24 1. General Damages;

25 2. Injunctive relief under 42 USC 12188(a), preventative relief, and/or any other

26 relief the Court deems proper.

27 3. Statutory damages and treble damages under Civil Code§ 52(a), (h) according

28 to proof.

- 1 4. Attorneys' fees and costs.
- 2 5. Interest at the legal rate from the date of the filing of this action.
- 3 6. For all such other relief as the Court deems proper.

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5 DATE: March 12, 2018

OVERSTREET & ASSOCIATES

6
7 By /s/ Rachelle Taylor Golden
8 RACHELLE TAYLOR GOLDEN
9 Attorney for Plaintiffs,
MEGAN MCKEON,
LAILA NEAL, and TINA NEAL

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VERIFICATION

I, MEGAN MCKEON, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 13, 2018

Megan McKeon

I, TINA NEAL, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 12, 2018

Tina Neal

I, LAILA NEAL, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 12, 2018

Tina Neal, Guardian Ad Litem for
Laila Neal

VERIFICATION

I, MEGAN MCKEON, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 12, 2018

Megan McKeon

I, TINA NEAL, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 12, 2018

Tina Neal

I, LAILA NEAL, am a Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

DATE: March 12, 2018

Tina Neal, Guardian Ad Litem for
Laila Neal